

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	
)	
CONNECT AMERICA FUND)	WC Docket No. 10-90
)	
HIGH-COST UNIVERSAL SERVICE SUPPORT)	WC Docket No. 05-337

**COMMENTS OF THE INDEPENDENT TELEPHONE & TELECOMMUNICATIONS
ALLIANCE IN SUPPORT OF FAIRPOINT COMMUNICATIONS, INC.'S
PETITION FOR WAIVER**

The Independent Telephone & Telecommunications Alliance (“ITTA”) hereby submits its comments in support of the Petition for Waiver filed by FairPoint Communications, Inc. (“FairPoint”) on September 10, 2012 in the above-captioned proceedings.¹ FairPoint seeks a waiver of the requirement set forth in Section 54.312(b)(2) of the Commission's rules that FairPoint deploy broadband to at least one unserved location for each \$775 it accepts in incremental CAF Phase I support.² As a procedural matter, FairPoint also seeks a waiver of the timeframe set forth in Section 54.312(b)(3) of the Commission’s rules that required price cap carriers to make an election of the CAF Phase I support allocated to them within 90 days of the Commission’s Public Notice announcing the availability of such funding.³

Granting the relief requested would allow FairPoint to bring broadband to hundreds of additional unserved locations in its service area with the remaining CAF Phase I funds it was allocated. Absent such relief, consumers at these locations will continue to wait for the broadband access that is transforming the lives of so many other Americans.

¹ FairPoint Communications, Inc. Petition for Waiver of Sections 54.312(b)(2) and (3) of the Commission’s Rules and Conditional Election of Incremental CAF Support, WC Docket Nos. 10-90, 05-337 (filed Sept. 10, 2012) (“FairPoint Petition”).

² 47 C.F.R. § 54.312(b)(2).

³ 47 C.F.R. § 54.312(b)(3).

ITTA believes that any waiver that would enable a price cap carrier to offer broadband service to locations in high-cost areas that otherwise would remain unserved by any competitor would serve the public interest. FairPoint’s request goes to the very core of the Commission’s goals of CAF Phase I “to provide an *immediate* boost to broadband deployment” to rural consumers that lack access to such service today.⁴ Therefore, the Commission should not only grant the FairPoint Petition without further delay, it should make the relief requested available to other price cap carriers that were allocated CAF Phase I funding.⁵

DISCUSSION

Under the Commission’s rules, a waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation will serve the public interest.⁶ As demonstrated below, special circumstances exist with respect to the instant request. Furthermore, grant of the relief requested would serve the public interest by helping to bring robust, reliable and affordable broadband service to unserved Americans in the near term while long-term CAF Phase II reforms are developed and put in place.

With respect to the first prong of the two-part test, special circumstances arise from the fact that the rule at issue simply does not allow the Commission to attain the purported objective it sought to achieve in establishing CAF Phase I. In fact, rigid observance of the rule threatens

⁴ *In the Matter of Connect America Fund, et al.*, WC Docket Nos. 10-90, *et al.*, Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, ¶ 137 (rel. Nov. 18, 2011) (“*USF/ICC Reform Order*”) (emphasis added).

⁵ Windstream Communications, Inc. also filed a Petition for Waiver that would allow it to use CAF Phase I funding to deploy broadband service to unserved locations where \$775 in incremental support is insufficient to make an economic case for deployment. *See* Windstream Election and Petition for Waiver, WC Docket Nos. 10-90, 05-337 (filed July 24, 2012); *see also* Comments of ITTA in Response to Windstream Petition for Waiver, WC Docket Nos. 10-90, 05-337 (filed Aug. 24, 2012).

⁶ *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements, et al.*, Report and Order and Memorandum Opinion and Order, 22 FCC Rcd 16440, ¶ 88, n. 256 (2007); *see generally* 47 C.F.R. § 1.3.

the very purpose of the CAF Phase I grant of \$300 million to price cap carriers to “expand voice and broadband availability as much and as quickly as possible” and help “close[e] the rural-rural divide” for consumers in areas of the country who need it most.⁷

Under the current rules, price cap carriers elected only \$115 million of the \$300 million in funding dedicated to CAF Phase I, leaving \$185 million that will remain unutilized unless the Commission takes further action to enable this funding to be used for its intended purpose. Such a result cannot be squared with the Commission’s priority “to immediately start to accelerate broadband deployment to unserved areas across America” while it designs and implements the long-term CAF Phase II distribution methodology.⁸ This outcome is particularly troublesome in light of the Commission’s recent conclusions in its annual broadband report that broadband is not yet being deployed in a reasonable and timely fashion, and that significant gaps among the 19 million Americans who lack access to broadband will remain until the Commission’s CAF reforms are “fully implemented.”⁹

⁷ *USF/ICC Reform Order* at ¶¶ 21-22, 128 n. 201, 145. As the Commission noted in the *USF/ICC Reform Order*, “[m]ore than 83 percent of the approximately 18 million Americans who lack access to fixed broadband live in price cap study areas.” *Id.* at ¶ 127.

⁸ *USF/ICC Reform Order* at ¶ 132.

⁹ *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, as Amended by the Broadband Data Improvement Act*, GN Docket No. 11-121, Eight Broadband Progress Report, FCC 12-90, ¶ 5 (rel. Aug. 21, 2012). For these reasons, the Commission also should grant the Petition for Waiver filed by CenturyLink that would allow it to use CAF Phase I funding to deploy broadband to areas that the National Broadband Map inaccurately identifies as served by certain Wireless Internet Service Providers. *See CenturyLink Petition for Waiver*, WC Docket Nos. 10-90, 07-135, 05-337, 03-109; CC Docket Nos. 01-92, 96-45; GN Docket No. 09-51, WT Docket No. 10-208 (filed June 26, 2012); *see also* Comments of ITTA in Support of CenturyLink Petition for Waiver, WC Docket No. 05-337; GN Docket No. 09-51 (filed July 12, 2012).

In FairPoint’s case, strict adherence to the rule as written means that FairPoint will be able to utilize less than 42 percent of the CAF Phase I funding allocated to its service area – only \$2,025,075 of \$4,856,858 set aside for the company – leaving hundreds of locations, and the consumers who live there, without reliable access to robust broadband services.¹⁰ It defies logic that rural Americans in FairPoint’s territory will be denied the benefits of broadband for the foreseeable future while the Commission continues to address how to structure and implement CAF Phase II reform.

If the waiver is granted, FairPoint estimates that it would be able to bring robust broadband service to an additional 697 locations in the state of Maine that lack any broadband access today.¹¹ As FairPoint points out, disbursing the remaining CAF Phase I incremental support allocated to FairPoint and other similarly-situated carriers, and thus significantly increasing the number of locations where broadband can be offered, “would constitute an ‘immediate boost’ to broadband deployment, benefitting rural consumers” who otherwise have no prospect of being served.¹² Consumers should not be deprived of the benefits of broadband service when FairPoint and other affected price cap carriers are in a position to offer service to them.

As for the second prong of the two-part test, providing the relief requested would serve the public interest precisely because it furthers the very purpose of CAF Phase I to “spur immediate broadband buildout” to American consumers and to close the rural-rural divide by

¹⁰ FairPoint Petition at 2, 11.

¹¹ *Id.* at 11. As indicated in the FairPoint Petition, its ability to take advantage of the remaining \$2.8 million in incremental support it has been allocated is conditioned on confirmation in pending state litigation that the company has met the broadband buildout requirements contained in a merger order issued by the Maine PUC due to the limitations in the Commission’s rules that CAF Phase I support “not be used to satisfy any merger commitment or similar regulatory obligation.” *See* 47 C.F.R. 54.312(b)(3); *see also* FairPoint Petition at 14-15.

¹² FairPoint Petition at 11; *see also id.* at 15-18.

enabling “price cap carriers to extend robust scalable broadband to hundreds of thousands of unserved Americans.”¹³

One of the Commission’s most important objectives in recent years has been to facilitate universal broadband access and adoption for all Americans, particularly for consumers in rural areas such as those where FairPoint and similar providers offer service.¹⁴ Access to robust broadband service is “crucial to our nation’s economic growth, global competitiveness, and civic life. Businesses need broadband to attract customers and employees, job-seekers need broadband to find jobs and training, and children need broadband to get a world-class education.”¹⁵ Indeed, the job opportunities broadband access makes available “are critical to our nation’s economic recovery and long term economic health, particularly in small towns... [and] rural and insular areas.”¹⁶

Given the importance of the goal of universal broadband access, no policy basis exists to deny the relief requested from FairPoint and other eligible price cap carriers when it would help achieve the basic objective of the CAF Phase I program. In fact, denial of the Petition would suppress investment and subvert the Commission’s wider broadband deployment initiatives. Most importantly, it would deprive many thousands of households and consumers in numerous states, where price cap carriers are poised to rapidly build-out network infrastructure, of the opportunity to subscribe to quality, affordable broadband services.

It cannot be emphasized enough that the Commission’s decision to grant the requested relief to FairPoint and other affected price cap carriers will determine whether thousands of geographically remote American households will, or will not, have fast and dependable

¹³ *USF/ICC Reform Order* at ¶ 22.

¹⁴ *See id.* at ¶ 5.

¹⁵ *Id.* at ¶ 3 (internal citations omitted).

¹⁶ *Id.*

broadband Internet access at affordable prices. In today's economy, access to broadband means access to jobs and economic opportunity, in addition to better education and healthcare. And for all Americans, particularly consumers in the most rural areas of the country, broadband access means "a better way of life."¹⁷ Granting FairPoint's request, and affording similar relief to other price cap carriers that have been allocated CAF Phase I funding, will make broadband a reality for many thousands of households while furthering the Commission's mission to ensure that all Americans are served by high-speed Internet access where they live, work, and travel.

CONCLUSION

For all of the foregoing reasons, the Commission should expeditiously grant the FairPoint Petition and make the requested relief available to other price cap carriers that have been allocated CAF Phase I funding.

Respectfully submitted,

By: /s/ Genevieve Morelli

Genevieve Morelli
Micah M. Caldwell
ITTA
1101 Vermont Ave., NW, Suite 501
Washington, D.C. 20005
(202) 898-1520
gmorelli@itta.us
mcaldwell@itta.us

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¹⁷ Federal Communications Commission, *Connecting America: The National Broadband Plan*, at xi (rel. Mar. 16, 2010).